

Internal Revenue Service

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Date:

August 20, 2013

LEGEND

X =

State =

Y =

Trust =

Beneficiaries =

D1 =

D2 =

D3 =

D4 =

D5 =

Dear :

This letter responds to a letter dated March 20, 2013, submitted on behalf of X requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was incorporated under the laws of State. X subsequently made an election to be treated as a subchapter S corporation effective on D1. On D2, individual shareholder Y transferred her stock in X to Trust, a grantor trust described in § 1361(c)(2)(A)(i) of which Y was the deemed owner.

Y died on D3. Trust qualified under § 1361(c)(2)(A)(ii) as an eligible shareholder for two years from Y's date of death. However, Trust continued to hold the X stock after the two-year period. As a result, X's S corporation election terminated on D4, the day after the two-year period following Y's death. After discovering the terminating event, the trustee of Trust distributed the X stock held by Trust to Trust's Beneficiaries, eligible S corporation shareholders, on D5.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make such adjustments, consistent with the treatment of X as an S corporation, as may be required by the Service.

LAW AND ANALYSIS

Section 1361(c)(2)(A)(ii) provides that for purposes of § 1361(b)(1)(B), a trust which was described in § 1361(c)(2)(A)(i) immediately before the death of the deemed owner and which continues in existence after such death may be a shareholder, but only for the 2-year period beginning on the day of the deemed owner's death.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) provides that any termination shall be effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's election to be treated as an S corporation terminated on D4, after the two-year period following Y's death. We also conclude that the termination constituted an inadvertent termination within the meaning of § 1362(f). Accordingly, X will be treated as continuing to be an S corporation from D4, and thereafter, provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d).

This ruling is contingent on X and all its shareholders treating X as having been an S corporation for the period beginning on D4, and thereafter. Accordingly, X's shareholders must include their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this ruling shall be null and void.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding whether X is otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representatives.

Sincerely,

/s/

Mary Beth Carchia
Acting Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
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